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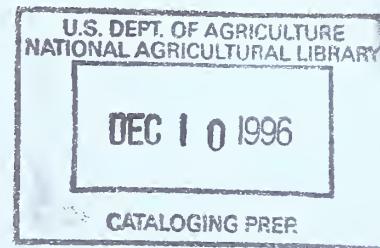


United States
Department of
Agriculture

Food and
Consumer
Service

Accommodating Children with Special Dietary Needs in the School Nutrition Programs

Guidance for School Food Service Staff



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May 1995

**GUIDANCE FOR ACCOMMODATING CHILDREN
WITH SPECIAL DIETARY NEEDS
IN THE SCHOOL NUTRITION PROGRAMS**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DEFINITIONS OF DISABILITY AND OF OTHER SPECIAL DIETARY NEEDS	3
	A. DISABILITY	3
	B. OTHER SPECIAL DIETARY NEEDS	5
III.	SCHOOL ISSUES	7
	A. SCHOOL FOOD SERVICE RESPONSIBILITIES	7
	B. FUNDING SOURCES	10
	C. HELPFUL RESOURCES	14
IV.	LEGAL CONCERNs AND LIABILITY	18
	A. SCHOOL RESPONSIBILITY TO MAKE ACCOMMODATIONS	18
	B. PERSONAL RESPONSIBILITY IN CASES OF NEGLIGENCE	20
V.	SITUATIONS AND RESPONSES	22
VI.	SAMPLE DOCUMENTATION FOR SPECIAL DIETARY NEEDS	32
	FIG 1. INFORMATION CARD	33
	FIG 2. EATING/FEEDING EVALUATION ..	34
VII.	GLOSSARY	35
VIII.	APPENDICES	39



LIST OF APPENDICES

APPENDIX A

FCS Instruction 783-2, Revision 2 <i>Meal Substitutions for Medical or Other Special Dietary Reasons</i>	39
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APPENDIX B

USDA, Food and Consumer Service Regional Directors Child Nutrition Programs	47
---	----

APPENDIX C

Nutrition Education and Training (NET) State Coordinators	49
--	----

APPENDIX D

Medicaid State Directors	53
--------------------------------	----

APPENDIX E

Maternal and Child Health Bureau Regional Program Consultants Public Health Service Department of Health and Human Services	59
--	----

APPENDIX F

Health Care Resources	61
-----------------------------	----



GUIDANCE FOR ACCOMMODATING CHILDREN WITH SPECIAL DIETARY NEEDS IN THE SCHOOL NUTRITION PROGRAMS

INTRODUCTION

In recent years, we have seen increasing emphasis on the importance of ensuring that children with disabilities have the same opportunities as other children to receive an education and education-related benefits, such as school meals.

Congress first addressed this concern in *The Rehabilitation Act of 1973*, which prohibits discrimination against qualified persons with disabilities in the programs or activities of any agency of the federal government's executive branch or any organization receiving federal financial assistance.

Subsequently, Congress passed the *Education of the Handicapped Act*, (now, the *Individuals with Disabilities Education Act*), which requires that a free and appropriate public education be provided for children with disabilities aged 3 through 21, and the *Americans with Disabilities Act*, a comprehensive law which broadens and extends civil rights protections for the approximately 43 million Americans with disabilities.

One effect of these laws has been an increase in the number of children with disabilities who are being educated in regular school programs along with their non-disabled peers. In some cases, the disability may prevent the child from eating meals prepared for the general school population.

The U.S. Department of Agriculture's (USDA) nondiscrimination regulations (7 CFR 15b), as well as the regulations governing the National School Lunch Program and School Breakfast Program, make it clear that substitutions to the regular meal must be made for children who are unable to eat school meals because of their disabilities, when that need is certified by a physician.

In most cases, children with disabilities can be accommodated with little extra expense or involvement. The nature of the child's disability, the reason the disability prevents the child from eating the regular school meal, and the specific substitution(s) needed will be specified in a statement signed by a licensed physician.

Often, the substitutions can be made relatively easily. There are situations, however, which may require additional equipment or specific technical training and expertise. When these instances occur, it is important that school food service managers and parent(s) be involved at the outset in preparations for the child's entrance into the school.

This guidance describes some of the factors which must be considered in the early phases of planning and suggests ways in which the school food service can interact with other responsible parties in the school and the community at large to serve children with disabilities.

The guidance is based on the policy guidelines outlined in the FCS Instruction 783-2, Revision 2, *Meal Substitutions for Medical or Other Special Dietary Reasons*.

Serving children with disabilities presents school food service staff with new challenges as well as rewards. This guidance presents information on how to handle situations that may arise in practice, and offers advice about such issues as funding and liability.

The guidance was prepared in consultation with the U.S. Department of Justice and the U.S. Department of Education and will be periodically updated to reflect new scientific information or new statutory and program guidelines.

II. DEFINITIONS OF DISABILITY AND OF OTHER SPECIAL DIETARY NEEDS

A. DISABILITY

Rehabilitation Act of 1973 and the Americans with Disabilities Act

Under Section 504 of the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act* (ADA), a "person with a disability" means any person who has a physical or mental impairment which substantially limits one or more major life activity, has a record of such an impairment, or is regarded as having such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as:

- orthopedic, visual, speech, and hearing impairments;
- cerebral palsy;
- epilepsy;
- muscular dystrophy;
- multiple sclerosis;
- cancer;
- heart disease;
- metabolic diseases, such as diabetes or phenylketonuria (PKU);
- food anaphylaxis (severe food allergy);
- mental retardation;
- emotional illness;
- drug addiction and alcoholism.

Major life activities covered by this definition include caring for one's self, eating, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Individuals with Disabilities Education Act

The term "disability" under the *Individuals with Disabilities Education Act* (IDEA) refers to specified mental, physical, emotional or sensory impairments which adversely affect a child's educational performance.

IDEA recognizes thirteen disability categories which establish a child's need for special education and related services.

These disabilities include:

- autism;
- deaf-blindness;
- deafness or other hearing impairments;
- mental retardation;
- orthopedic impairments;
- serious chronic or acute health problems, such as a heart condition, epilepsy, or tuberculosis;
- serious emotional disturbance;
- specific learning disabilities;
- speech or language impairment;
- traumatic brain injury, and
- blindness or a visual impairment which adversely affects a child's educational performance.

The Individualized Education Program (IEP) is the written document that contains the program of special education and related services to be provided to a child with a disability covered under IDEA.

When nutrition services are required under a child's IEP, school officials need to make sure that school food service staff are involved early on in decisions regarding special meals.

Physician's Statement for Children with Disabilities

USDA regulations require substitutions or modifications in school meals for children whose disabilities restrict their diets. A child with a disability must be provided substitutions in foods when that need is supported by a statement signed by a licensed physician. The physician's statement must identify:

- ✓ The child's disability and an explanation of why the disability restricts the child's diet;
- ✓ The major life activity affected by the disability;
- ✓ The food or foods to be omitted from the child's diet, and the food or choice of foods that must be substituted.

In Cases of Food Allergy

Generally, children with food allergies or intolerances do not have a disability as defined under 7 CFR 15b.3 of USDA's nondiscrimination regulations, and school food authorities may, but are not required to, make substitutions for them.

However, when in the physician's assessment, food allergies may result in severe, life-threatening (anaphylactic) reactions, the child's condition would meet the definition of "disability", and the substitutions prescribed by the physician must be made.

B. OTHER SPECIAL DIETARY NEEDS

Schools may make food substitutions, at their discretion, for individual children who do not have a disability, but who are medically certified as having a special medical or dietary need.

Such determinations are only made on a case-by-case basis and must be supported by a statement which specifies the needed food substitution and is signed by a licensed medical

authority (e.g., physician, physician assistant, nurse practitioner, or registered nurse) or other health professional specified by the State agency.

This provision covers those children who have food intolerances or allergies but do not have life-threatening reactions (anaphylactic reactions) when exposed to the food(s) to which they are allergic.

Medical Statement for Children with Special Dietary Needs

The medical statement must include:

- ✓ An identification of the medical or other special dietary need which restricts the child's diet; and
- ✓ The food or foods to be omitted from the child's diet, and the food or choice of foods to be substituted.

III. SCHOOL ISSUES

The school food service, like the other programs in the school, is responsible for ensuring that its benefits (meals) are made available to all children, including children with disabilities. This raises questions in a number of areas:

- A. What are the responsibilities of the school food service?
- B. Where can additional funds be obtained?
- C. Who can provide more information and technical assistance?

A. SCHOOL FOOD SERVICE RESPONSIBILITIES

- ✓ School food service staff must make food substitutions or accommodations for students with disabilities.
- ✓ Substitutions for students with disabilities must be based on a prescription written by a licensed physician.
- ✓ The school food service is encouraged, but not required, to provide food substitutions or accommodations, on a case-by-case basis, for other children with medically certified special dietary needs.
- ✓ Substitutions for other students with special dietary needs may be based on a medical statement by a medical authority or health professional recognized by the State.
- ✓ Under no circumstances are school food service staff to revise or change a diet prescription or medical order.
- ✓ For basic guidelines, see FCS Instruction 783-2, Revision 2, *Meal Substitutions for Medical or Other Special Dietary Reasons*, in Appendix A.

Providing Special Meals to Children with Disabilities

The school food service is required to offer special meals, at no additional cost, to children with disabilities as defined in USDA's nondiscrimination regulations, 7 CFR Part 15b, who have special dietary needs.

- ✓ If a child's IEP includes a nutrition component, the school should ensure that school food service managers are involved early on in decisions regarding special meals or accommodations.
- ✓ The school food service is not required to provide meal services to children with disabilities when the meal service is not normally available to the general student body, unless the food service is required under the child's IEP.

For example, if a school breakfast program is not offered, the school food service is not required to provide breakfast, unless this is specified in the child's IEP.

However, if a student is receiving special education and has an IEP, and the IEP indicates that the child needs to be served breakfast at school, then the school food service is required to provide this meal to that child. This is discussed in more detail in Section V, under Situation 2.

Menu Modifications

Children with disabilities who require changes to the basic meal (such as special supplements or substitutions) are required to provide documentation with accompanying information from a licensed physician. This is required to justify that the modified meal is reimbursable, and to ensure that any meal modifications meet nutrition standards which are medically appropriate for the specific child.

Texture Modifications

For children with disabilities who only require modifications in texture (such as chopped, ground or pureed foods), a physician's written instructions indicating the appropriate food texture is recommended, but not required.

However, the State agency or school food authority may apply stricter guidelines, and require that the school keep on file a physician's statement concerning needed modifications in texture.

- ✓ In order to minimize the chance of misunderstandings, it is recommended that the school food service, at a minimum, maintain written instructions or guidance from a recognized medical authority regarding the texture modifications to be made. For children receiving special education, the texture modification should be included in the IEP.
- ✓ School food service staff must follow the instructions that have been prescribed by the physician or recognized medical authority.

Serving the Special Dietary Needs of Children Without Disabilities

Children without disabilities, but with special health needs requiring dietary modifications, may request that the school food service meet their special nutrition needs.

- ✓ These situations will be decided by the school food authority on a case-by-case basis. Documentation with accompanying information must be provided by a recognized medical authority acceptable to the State agency.
- ✓ While we certainly encourage school food authorities to consult with recognized medical authorities, such as licensed physicians, nurse practitioners, physician assistants, registered nurses (R.N.), as well as registered dietitians (R.D.), where appropriate, schools are not required to make modifications to meals due to personal opinions regarding "healthy" diets.

- ✓ It is important that all recommendations for accommodations or changes to existing diet orders be documented in writing to protect the school and minimize misunderstandings.

B. FUNDING SOURCES

Price of Meals

Meals must be served free or at a reduced price (a maximum of 40 cents for lunch and 30 cents for breakfast) to children who qualify for these benefits regardless of whether or not they have a disability.

Schools may not charge children with disabilities or with certified special dietary needs who require food substitutions or modifications more than they charge other children for program meals or snacks.

Incurring Additional Expenses

In most cases, children with disabilities can be accommodated with little extra expense or involvement. If additional expenses are incurred in providing food substitutions for children with special needs, in general, the school food authority should be able to absorb the cost of making meal modifications.

However, when the school food service has difficulty covering the additional cost, there are several alternative sources of funding which school food service managers, school administrators, parents or guardians, and teachers may consider. These sources include the school district's general fund and the additional funding sources listed below.

Any additional funding received by school nutrition services for costs incurred in providing special meals must accrue to the nonprofit school food service account.

Potential Funding Sources

Individuals with Disabilities Education Act

The *Individuals with Disabilities Education Act* (IDEA), through the Part B Program, provides Federal funds to assist States and school districts in making a "free appropriate public education" available to eligible children with specified disabilities, residing within the State.

Students with specified physical, mental, emotional or sensory impairments who need special education and related services are eligible for services under IDEA, at no cost to parents.

In appropriate situations, nutrition services may be specified as **special education** (specially designed instruction) or a **related service** (support services required to assist a child with a disability to benefit from special education).

Services which may be funded include: (1) purchase of special foods, supplements, or feeding equipment; (2) consultation services of a registered dietitian (R.D.) or nutrition professional; (3) assistance of a special education teacher, occupational therapist or other health professional in feeding the child or developing feeding skills.

USDA Grants for Special Dietary Needs

The *Healthy Meals for Healthy Americans Act*, enacted November 2, 1994, authorized a limited amount of funding for competitive grants to State educational agencies for each of fiscal years 1995 through 1998 to assist schools and institutions with nonrecurring expenses incurred in accommodating the medical and special dietary needs of children with disabilities. The actual funding for each year of these grants is, however, dependent on annual appropriations by Congress. For information on these grants, contact your State agency for child nutrition programs.

Medicaid

Title XIX of the *Social Security Act*, is an entitlement program which finances medical services for certain individuals and families with low incomes and resources.

Within broad Federal guidelines, a State or territory: (1) establishes its own eligibility standards; (2) determines the type, amount, duration, and scope of services; (3) sets the rates of payment for services; and (4) administers its own program.

The Medicaid program, jointly funded by Federal and State governments, varies considerably from State to State as each State adapts the program to its own unique environment.

In the case of certain low-income children eligible for Medicaid, Medicaid may pay for services which are medical and remedial in nature. These services may include special dietary supplements, eating devices, and nutritional consultation as medically necessary.

Medicaid reimbursement is paid directly to the provider of services, such as a physician, pharmacy, medical equipment supplier, clinic, and, in certain situations, school food authorities and/or schools. Questions regarding provider qualifications should be directed to the State Medicaid agency.

Early and Periodic Screening, Diagnostic and Treatment Program

Medicaid's child health program, the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Program is a preventive and comprehensive health care benefit for Medicaid-eligible individuals up to age 21. An objective of the EPSDT Program is to detect and treat health problems and conditions early before they become more complex and costly.

The EPSDT Program allows providers, including schools, to be reimbursed for preventive and treatment services for Medicaid-eligible children. Questions regarding EPSDT coverage under Medicaid should be directed to the State Medicaid agency or to the State EPSDT Coordinator.

The Health Care Financing Administration (HCFA), the agency responsible for Medicaid at the Federal level, has published an informative booklet, *EPSDT: A Guide for*

Educational Programs, HCFA publication no. 02192, to assist schools in developing linkages with Medicaid and the EPSDT Program.

The EPSDT Guide may be obtained by contacting: Medicaid Special Program Initiatives Staff, Medicaid Bureau, Room 233 EHR, at 6325 Security Boulevard in Baltimore, Maryland, 21207.

Supplemental Security Income

Supplemental Security Income (SSI), under Title V of the *Social Security Act*, provides rehabilitative services to children under age 16 who are receiving benefits under SSI, to the extent that Medicaid is not covering the service.

SSI provides basic income for needy children under age 18 (students under age 22) who are blind or who have a severe disability or chronic illness. For information on SSI eligibility, contact your local Social Security Office.

Medicare

Medicare provides services for children and adults with end-stage renal (kidney) disease. However, Medicare coverage of nutritional supplies is generally limited to durable medical equipment such as a feeding pump or other special (parenteral or enteral) nutritional feeding equipment necessary for people who cannot be sustained through normal means of feeding by mouth.

Maternal and Child Health Services Block Grants

The Maternal and Child Health Bureau (MCHB), at the Department of Health and Human Services, administers Maternal and Child Health Services Block Grants, authorized under Title V of the *Social Security Act*. These grants enable States to provide a variety of services, including community-based services for children with special health care needs (CSHCN).

The MCHB also administers discretionary grants for special projects of regional and national significance (SPRANS). Among the areas funded as SPRANS are maternal and child health improvement projects which demonstrate and test approaches to improving the delivery of services to CSHCN.

Title V, Maternal and Child Health programs are located in the State health departments, and the majority of the programs for CSHCN are also located in the State health departments. For further information, you may contact the State Title V Director for Maternal and Child Health or the Regional MCHB Program Consultant for your State listed in Appendix E.

Community Sources

PTAs, voluntary health associations, local civic organizations, and other community-based groups may be able to assist with the procurement of equipment and provide other support services. (See Appendix F for a partial list of voluntary and professional health organizations which offer information and support for various disabilities or special health care needs.)

C. HELPFUL RESOURCES

School nutrition staff should work closely with the support people who are familiar with the needs of the child. The child's parents or guardians, teachers, occupational and physical therapists, special education staff, and the school nurse are valuable resources.

The Americans with Disabilities Act (ADA) Coordinator for your school district or local jurisdiction may also be of assistance. The ADA Coordinator is generally located in the local Disabilities Services or Human Rights Office. For assistance, you may call the national referral number for the Regional Disability and Business Technical Assistance Centers at (800) 949-4ADA.

Local health department, hospital, or medical center registered dietitians may be able to provide assistance in understanding diet orders, developing and modifying meal plans and menus, special food item purchases, and other aspects of feeding children with special needs.

In addition, the following resources may provide technical assistance or referrals to qualified nutrition and health professionals:

State Nutrition Education and Training (NET) Coordinators

The NET Program promotes healthy eating for children in schools and child care facilities. Nutrition education activities are administered through grants to States. The State NET coordinator may be able to provide direction and information on sources of assistance in feeding children with special needs. Appendix C contains a list of the State NET Coordinators.

State Title V Directors, Maternal and Child Health (MCH) and Children with Special Health Care Needs (CSHCN)

Each State has a Title V director responsible for overseeing State programs for children with special health care needs. Most States also have public health nutritionists who are responsible for nutritional services for these children.

For further information on State Title V program activities or referral to your State Title V MCH or CSHCN personnel, contact your State agency or the MCH Bureau Regional Program Consultant for your State listed in Appendix E.

The American Dietetic Association (ADA)

The ADA's Technical Information Service may be of assistance to school food service or health professionals in providing a referral to a qualified registered dietitian (R.D.) in your area.

R.D.s can answer questions on special diets, menu planning, and related topics. An R.D. may work with the physician and school nutrition staff to assist in meeting a child's special nutritional needs and to ensure that menus are in compliance with the physician's diet order. Such services are an allowable program cost.

To request a referral to an R.D. in your area, you may call the ADA's Technical Information Service at (312) 899-0040, extension 4853.

University Affiliated Programs for Developmentally Disabled (UAP)

UAPs were established to support the independence, productivity, and community integration of all citizens with developmental disabilities. There are currently over 60 UAPs across the nation representing 49 States, the District of Columbia, and Puerto Rico.

Within their respective States, UAPs serve as liaisons between the academic world and the developmental disabilities service delivery system. UAPs also provide family and individual support services, as well as personal assistance, clinical, health, prevention, education, vocational, and other services. UAPs may be able to help school nutrition staff in the design of appropriate meals for certain disabilities or in identifying specialists with training in those areas.

For a referral to a UAP in your area, contact the National Office of the American Association of University Affiliated Programs at (301) 588-8252.

Regional Disability and Business Technical Assistance Centers

Ten regional centers are funded by the National Institute on Disability Rehabilitation and Research of the U.S. Department of Education to provide information and technical assistance on the *Americans with Disabilities Act (ADA)*.

Copies of ADA documents, supplied by the Equal Employment Opportunity Commission and the Department of Justice, may be obtained at any of the regional centers. These materials are available in standard print, large print, and braille, and on audio cassette and computer disk.

For the telephone number and address of your regional center, you may call (800) 949-4ADA.

Other Health Care and Disability Related Organizations

Appendix F contains a listing of organizations which may offer assistance regarding children with different health care needs. The appendix includes such organizations as the American Diabetic Association, Food Allergy Network, United Cerebral Palsy, Easter Seal Society, and many more.

Other Information Sources

- Food and Nutrition Information Center
(FNIC), USDA/National Agricultural Library
(301) 504-5719
- National Food Service Management Institute
(NFSMI), The University of Mississippi
(800) 321-3054
(601) 232-7658
- International Food Information Council
Foundation
202-296-6540

IV. LEGAL CONCERNs AND LIABILITY

A growing body of Federal law clearly intends that children with disabilities have the same rights and privileges, and the same access to benefits, such as school meals, as nondisabled children. Consequently, schools which do not make appropriate program accommodations for children with disabilities could be found in violation of Federal civil rights laws.

School administrators and nutrition staff should be aware of two issues involving liability: (1) the school's responsibility for providing program accommodations for children with disabilities and (2) the question of personal responsibility in cases of negligence. These two issues are discussed below.

A. SCHOOL RESPONSIBILITY TO MAKE ACCOMMODATIONS

Section 504 *Rehabilitation Act of 1973*

Section 504 of the *Rehabilitation Act of 1973* specifically mandates that

"...no otherwise qualified individual with a disability shall solely by reason of his or her disability be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

This mandate has been incorporated in 7 CFR Part 15b, USDA regulations implementing this law, as well as the Department of Education's Section 504 regulation at 34 CFR Part 104. Thus, schools receiving Federal funding must make accommodations to enable children with disabilities to participate in the child nutrition programs.

Individuals with Disabilities Education Act

The *Individuals with Disabilities Education Act (IDEA)* assists States and school districts in making a "free appropriate public education" available to eligible students.

Under IDEA, a "free appropriate public education" means special education and related services provided under public supervision and direction, in conformity with an individualized education program (IEP), at no cost to parents.

In appropriate situations, nutrition services could be deemed "special education" (specially designed instruction) or a "related service" (support services required to assist a child with a disability to benefit from special education).

Title II

Americans With Disabilities Act

Title II of the *Americans with Disabilities Act (ADA)*, enacted in 1990, requires equal availability and accessibility in State and local government programs and services, including public schools.

In this respect, the ADA underscores the statutory prohibition of Section 504 against discrimination on the basis of disability by programs receiving Federal funding, such as reimbursement under the school meal programs.

Title II of the ADA does not impose any major new requirements on school districts because the requirements of Title II and Section 504 are similar. Virtually all school districts receive Federal financial assistance and have been required to comply with Section 504 for many years.

Title III

Americans With Disabilities Act

Title III of the ADA extends requirements for public accommodations to privately owned facilities.

Thus, all private schools participating in the federally funded child nutrition programs must make accommodations to enable children with disabilities to receive school meals.

Although religious organizations are exempt from the public accommodations requirements of Title III, church-operated schools which receive Federal funding assistance under the child nutrition programs continue to be subject to the non-discrimination requirements of Section 504.

B. PERSONAL RESPONSIBILITY IN CASES OF NEGLIGENCE

In order to accommodate a child with a disability, the school must ensure that both facilities and personnel are adequate to provide necessary services.

In some cases, it may be advisable for specially trained personnel, such as a registered dietitian (R.D.), to provide guidance to the school nutrition staff on how the physician has ordered the child's meals to be modified.

Moreover, for certain children with disabilities, it may be necessary to have a nurse or health aide feed the child or have a specially trained professional, such as a special education teacher, occupational therapist, or speech therapist, assist the child in order to help the child develop and improve eating skills.

Administering Feedings

For children requiring assistance in eating, the determination of who will feed the child is a local school decision.

While the school food service is specifically responsible for providing the necessary foods needed by a child with a disability, it is not the specific responsibility of the school food service staff to physically feed the child.

Furthermore, schools should be aware that they could be held liable if persons without sufficient training are performing tasks or activities such as developing or modifying a diet order prescribed by a medical authority or administering tube feedings.

Diet Orders

If school nutrition staff have questions about the diet order, the prescribed meal substitutions, or any other accommodation, the child's physician and/or a registered dietitian should be consulted. If the school food service director cannot obtain local level assistance, the State agency should be consulted for technical assistance.

Under no circumstances should school food service staff diagnose health conditions, prescribe nutritional requirements, or interpret, revise or change a diet prescription.

Negligence

If a mishap should occur, personal liability would normally depend on whether or not the person responsible for the feeding has been negligent.

In these cases, a determination that a person acted negligently would be made on the basis of State laws and the facts in the individual situation.

In general, negligence occurs when a person fails to exercise the care expected of a prudent person.

Persons involved with special feeding operations should, therefore, make sure that they thoroughly understand the required procedures and techniques and are careful to follow instructions.

For specific guidance concerning personal liability, the school food service director or principal should contact State or local legal counsel.

V. SITUATIONS AND RESPONSES

In order to provide some practical guidelines, this chapter discusses several situations which are relatively common and which have raised questions in the past. These examples have been included because they illustrate certain principles and give general direction on what schools and institutions must do under the law.

Remember, circumstances vary from case to case. Schools should not automatically assume that the responses given in this section will always apply. When an actual situation occurs which has elements different from those discussed here, the State agency should be consulted for guidance.

The examples in this section have been grouped under the following topics:

- Meals and/or items not part of the normal meal service,
- Special needs which may or may not involve disabilities,
- Obligations of food service management companies and other private feeding operations,
- Separate facilities in feeding operations,
- Temporary disabilities,
- Complicated feedings,
- Food service account, and
- Documentation.

MEALS AND/OR ITEMS NOT PART OF THE NORMAL MEAL SERVICE

Situation 1:

As part of the therapy for a child with a disability, the doctor has required the child to consume six cans of cranberry juice a day. The juice is to be served at regular intervals, and some of these servings would occur outside of the normal lunch period. Is the school food service required to provide all of the servings of juice?

Response:

No. The general guideline in making accommodations is that children with disabilities must be able to participate in and receive benefits from programs that are available to nondisabled children.

In this example, the school food service would be required to provide (and pay for) cranberry juice as part of the regular reimbursable breakfast and/or lunch service. However, the school food service would not be required to pay for other servings throughout the school day unless they are specified in the IEP.

It must be recognized that there will be exceptions to this general rule. For example, residential child care institutions (RCCI), such as juvenile correction facilities, may be required to provide additional foods or servings since the child would be unable to obtain the prescribed food in any other way.

It must be stressed that such accommodation would depend on the specific circumstances of each case and, in any event, would go beyond obligations under the school nutrition programs.

In general, additional servings beyond what is required under the program meal may, but need not, be charged to the nonprofit food service account.

Situation 2:

A child with a disability must have a full breakfast each morning. Is the school food service required to provide a breakfast for this child even though a breakfast program is not available for the general school population?

Response:

As noted above, the school food service is not required to provide to children with disabilities services and benefits that are not otherwise available. If the school does not have a breakfast program already, it does not need to initiate a program exclusively for children with disabilities.

However, if the IEP requires that a child receive a breakfast at school, the school must provide the service, and may choose to have the school food service handle the responsibility.

Another exception to the general rule concerns a child with disability who resides in a residential child care institution (RCCI) and requires special food service. In the case of RCCIs, the institution serves as the child's home, and the child would have no other recourse for meals. Thus, the RCCI must provide the child a full breakfast, if this is specified in the physician's statement or in the IEP.

Situation 3:

A physician has prescribed portion sizes that exceed the minimum quantity requirements set forth in the regulations. Is the school required to provide these additional quantities?

Response:

Yes. The school must provide the child food portions which exceed the minimum quantity requirements, if specifically prescribed in the physician's statement.

SPECIAL NEEDS WHICH MAY OR MAY NOT INVOLVE DISABILITIES

Situation 4:

A child has a life threatening allergy which causes an anaphylactic (allergic) reaction to peanuts. The slightest contact with peanuts or peanut derivatives, such as peanut oil, could be fatal. To what lengths must the food service go to accommodate the child? Is it sufficient for the school food service to merely avoid obvious foods, such as peanut butter, or must school food service staff research every ingredient and additive in processed foods or regularly post all of the ingredients used in recipes?

Response:

The school has the responsibility to provide a "safe", non-allergic meal to the child if it is determined that the condition is disabling. To do so, school food service staff must make sure that all food items offered to the allergic child meet prescribed guidelines and are free of foods which are suspected of causing the allergic reaction.

This means that the labels or specifications may need to be checked to ensure that they do not contain traces of such substances. In some cases, the labels will provide enough information to make a reasoned judgment possible. If they

do not provide an obvious answer, it is the responsibility of the school food service to obtain the necessary information to ensure that no allergic substances are present in the food served.

In some cases, it may be necessary to contact the supplier or the manufacturer or to check with the State agency. Private organizations, such as the Food Allergy Network (see Appendix F), may also be consulted for information and advice. It is also wise to check with parents about certain foods and even provide them with advance copies of menus.

The general rule in these situations is to exercise caution at all times. Do not serve foods to children at risk for anaphylactic reactions, if you do not know what is in them. It is important to recognize that a child may be provided a meal which is equivalent to the meal served to other children, but not necessarily the same meal.

Sometimes, it will be advisable to prepare a separate meal "from scratch" using ingredients that are allowed on the special diet rather than serving a meal using processed foods.

Situation 5:

A child has a health condition that does not meet the definition of "disability" set forth in the legislation and regulations. For example, the child is overweight (but not "morbidly" so), or the child has elevated blood cholesterol. Is the school obligated to accommodate the needs of this child?

Response:

The school may make substitutions for children who are not considered to be disabled, but who should avoid certain foods. However, the school is not required to do so. When the school does elect to accommodate these children, it must have a supporting statement signed by a recognized medical authority (as designated by the State agency) on file.

In most cases, the dietary needs of such children can be accommodated at the food service site in schools and institutions where a variety of nutritious foods are available for individual choice. In addition, the "offer versus serve" provision which allows students the option to decline one or

two food items in the normal (reimbursable) school meal may be of assistance in accommodating an individual's particular diet.

Situation 6:

A child's parents have requested that the school prepare a strict vegetarian diet for their child based on a statement from a health food store "nutrition advisor" who is not a licensed physician. Must the school comply with this request?

Response:

No. The school is responsible only for accommodating those conditions meeting the definition of disability as described in 7 CFR Part 15b. Schools are not required to make food substitutions based solely on opinions regarding a healthful diet.

OBLIGATIONS OF FOOD SERVICE MANAGEMENT COMPANIES AND OTHER PRIVATE FEEDING OPERATIONS

Situation 7:

A school district has contracted with a food service management company (FSMC) to operate the school's food service. Is the FSMC obligated to accommodate children with disabilities?

Response:

Yes. The school is always required to ensure that any benefits available for the general school population are equally available to children with disabilities. Consequently, accommodations for these children must be made regardless of whether the school district operates the food service itself or contracts with an FSMC to do so.

However, as a procurement issue, accommodations for children with disabilities must be included in the contract. School food authorities that do not have any need for special dietary accommodations at the time a FSMC bid is prepared, should still include sufficient information in the bid to ensure that the FSMC is aware that dietary accommodations may be required during the term of the contract.

Situation 8:

Some schools purchase items from nationally recognized fast-food chains and sell these items on an "a la carte" basis.

These items are frequently sold in a setting such as a kiosk which uses the chain's logo or otherwise advertises the product. What obligation, if any, does the fast food chain have to provide alternative meals?

Response:

When the school is purchasing and selling the product, itself, the chain incurs no more obligations than any other wholesaler or retailer of food products. Consequently, it is important that parents, school food service staff, and other involved school personnel identify and discuss the particular needs of children with special needs and take steps to ensure such children, especially very young children, do not purchase "a la carte" items which can be harmful to them.

Technically, food items sold strictly on an "a la carte" basis are not part of the school lunch program and are, therefore, not subject to program regulations with respect to their content, as long as they do not belong to any of the categories of foods of minimal nutritional value. Thus, the chain may not be under the obligation to provide alternate food items, unless this is explicitly stated in its contract to vend food items to the school.

However, the school would be well advised to obtain from the food chain or vendor(s) specific information on the ingredients in the food products purchased, particularly, if there are children diagnosed at risk of severe food allergies who are participating in the program. Furthermore, the school may want to consider including such product information as a specification in its contract with the chain or vendor.

FEEDING IN SEPARATE FACILITIES—GENERALLY NOT ACCEPTABLE

Situation 9:

A school wishes to serve meals to children with disabilities in an area separate from the cafeteria where the majority of school children eat. May the school establish a separate facility for these children?

Response:

Federal civil rights legislation, including Section 504 of the Rehabilitation Act of 1973, IDEA, and Title II of the ADA, requires that in providing for or arranging for the provision of nonacademic services and extracurricular activities, including meals, school districts must ensure that students with disabilities participate along with their nondisabled peers to the maximum extent appropriate to the needs of the disabled student.

In general, children with disabilities must be allowed to participate with other children to the maximum extent appropriate. In this way, the child has the opportunity to interact with and learn from children without disabilities. The school must **not** segregate children with disabilities on the basis of convenience to the school or to other children.

In rare instances, however, it may be to the child's benefit to be served separately. For instance, children with severe motor disabilities may be able to receive individualized attention as they learn to handle eating utensils if a special education specialist is able to work with them outside the cafeteria.

Nevertheless, it must be emphasized that in all cases, the decision to feed children with disabilities separately must always be based on what is appropriate to meet the needs of the child. The decision should **not** be based on the convenience of the school or the other children.

TEMPORARY DISABILITIES

Situation 10:

A child was involved in an accident and underwent major oral surgery. As a result, the child will be unable to consume food for a period of time unless the texture is modified. Is the school obligated to make this accommodation even though the child will not be permanently disabled?

Response:

Situations involving short-term disabilities must be considered on a case-by-case basis. Moreover, if the child presents a medical statement from a physician, the school must make the food modifications prescribed for the child.

In general, schools must consider whether or not the child's inability to participate in the meal service for a given length of time could adversely affect the child's health. If the answer is yes, the necessary accommodation must be made.

COMPLICATED FEEDINGS

Situation 11:

A child enrolled in the school will require tube feedings. Is the food service only required to pay for and provide the food, or are the costs for the school nurse, an aide or a specially trained professional to administer the feeding also assigned to the food service?

Response:

It must be emphasized that the overall responsibility for accommodating children with disabilities rests with the school district. The school district administration is responsible for allocating the district's costs of accommodating children with disabilities and for deciding which personnel will work with individual children.

In most instances involving food substitutions, the food service account will be used to pay the cost of special food and food preparation equipment, and food service personnel will generally be responsible for providing the alternate meal. For instance, if a child must have a blenderized meal, it is reasonable to expect the food service to purchase a blender or food processor and to have the meal prepared by the food service staff.

In the case of more delicate operations, such as tube feeding, it is advisable that prescribed nutritive formulas, specially designed for tube feedings, be used rather than a blenderized formula which may be subject to spoilage and may not always have the correct consistency. Proper administration of this type of feeding generally requires the skills of specially trained personnel, such as nurses or the special aides who regularly work with the child.

Special labor costs may be covered through special education funds, if the child has an IEP. If the child does not have an IEP, these costs may, as appropriate, be charged in part to the

food service account, or may be assigned to the school district's general fund or to other funding sources.

Situation 12:

A child with a disability is on a number of medications. The child has a well defined diet prescription with accompanying menus. If a situation arises where a specific food item is out of stock, should school food service operators make substitutions on an "as necessary" basis.

Response:

No. School food service operators should not decide what substitutions are appropriate for a given child. Ideally, a list of appropriate substitutions should accompany the menus and the food items should be on hand on a regular basis. If such a list is not available, food service operators should make every attempt to notify the appropriate medical authority (probably the person who planned the child's menus) to determine those food items that may be substituted.

Food service operators are strongly advised not to choose the substitutions themselves because a child may be on a specific medication which could interact in a negative way with a particular food item.

FOOD SERVICE ACCOUNT

Situation 13:

A child with a disability needs to consume six cans of a nutritional supplement during the school day: two cans at breakfast, one can as a mid-morning snack, two cans at lunch, and one can as a mid-afternoon snack. The cost of the breakfast and lunch supplements are allowable food service expenses. If the school chooses to offer the additional supplement at the mid-morning and mid-afternoon snack period, are these allowable costs to the food service account?

Response:

Yes. While it is not required that these costs be charged to the nonprofit school food service account, these supplements are a legitimate charge to the food service account.

Situation 14:

A child with a disability requires the services of the school nurse for assistance in feeding at the lunch meal. Can the food service account be billed for the services of non-food service personnel such as the school nurse or special aide who may be assisting in the feeding of the child or other nutrition related activity?

Response:

Yes. The services of any personnel necessary to the food service can be billed to the food service account on a pro rata basis. It must be emphasized, however, that the food service account may only be billed for the amount of time that the person actually spends related to food service. If a school nurse spends one hour per day feeding a child with a special need, then only that portion of his/her salary can be charged to the food service account—not the entire salary. If the child is receiving special education and the child's IEP includes a nutrition or feeding component, special education funds may be available to the school to provide required services for the child.

DOCUMENTATION

Situation 15:

The physician's statement only specifies the medical disability, not the required food substitutions. What should the food service director do?

Response:

First of all, the school (food service representative or possibly school nurse) should request more written information from the physician concerning the needed dietary accommodations. If difficulties arise in obtaining the needed information, the parent(s) should be advised of the problem and asked to work with the school to obtain a more complete medical statement for the child. It is important that the family understand that the school is unable to provide food substitutions without an adequate medical order.

In some cases, it may be appropriate and helpful for the physician to provide a written referral to a registered dietitian or other qualified professional for diet substitutions. For further guidance or referral to a registered dietitian, school food service directors may contact their State agency.

VI. SAMPLE DOCUMENTATION FOR SPECIAL DIETARY NEEDS

A. INFORMATION CARD

It may be necessary to document the special nutritional needs of certain children. Figure 1 offers an example of an Information Card which can be used on-site to prepare meals daily for the students requiring dietary modifications.

The medical statement does not have to be renewed each year if there are no changes in the prescription. However, any changes in the child's medical condition or diet order must be noted and dated.

B. EATING/FEEDING EVALUATION

Figure 2 includes a sample Eating/Feeding Evaluation for Children with Special Needs to be completed by the parent, the physician, or appropriate medical authority. Schools should retain copies of special, non-meal pattern diets on file for reviews.

(The Information Card and the Eating/Feeding Evaluation Form were adapted, with permission, from forms developed by Susan Woods, R.D., for Bibb County Schools in Georgia.)

FIGURE 1

INFORMATION CARD

Student's Name	Teacher's Name
Dietary Restrictions/Special Diet	
Food Allergies/Intolerances	
Food Substitutions	
Foods Requiring Texture Modifications: Chopped	
Finely ground	
Pureed/blended	
Other Diet Modifications	
Feeding Techniques	
Supplemental Feedings (snacks)	
Physician/Medical Authority Documentation Received—name, telephone, date	
Additional Contacts (R.D., etc.)—name, telephone, date	
Person Completing Form	Date

FIGURE 2

**EATING/FEEDING EVALUATION:
CHILDREN WITH SPECIAL NEEDS**

Student's Name		
School Name		
Student's Age	Grade Level	Classroom
Does the student have a disability? Yes No If Yes, describe the major life activities affected by the disability.		
If Yes, does the student have special nutritional or feeding needs? Yes No If Yes, complete this form and have it signed by a physician.		
If the student is not disabled, does he/she have special nutritional or feeding needs? Yes No If Yes, complete this form and have it signed by the appropriate medical authority.		
<i>If the student does not require special meal considerations and is able to eat a regular diet, the parent can sign at the bottom and return the form to the school food service.</i>		
List any dietary restrictions or special diet.		
List any allergies or food intolerances to avoid.		
List foods to be substituted.		
List foods that need the following change in texture. If all foods need to be prepared in this manner, indicate "All". Cut up or chopped to bite size pieces:		
Finely ground:		
Pureed:		
List special equipment or utensils needed.		
Indicate any other comments regarding the student's eating or feeding patterns.		
Parent's Signature		Date
Physician's or Medical Authority's Signature		Date

VII. GLOSSARY

AMERICANS WITH DISABILITIES ACT (ADA):

Comprehensive legislation, signed into law on July 26, 1990, that creates new rights and extends existing rights for the 43 million Americans with disabilities. Title II of the Act is especially significant for the school nutrition programs, as it requires equal availability and accessibility in State and local government programs and services, including public schools.

ANAPHYLAXIS/ANAPHYLACTIC REACTION: A rare but potentially fatal condition in which several different parts of the body experience food-allergic reactions at the same time. Symptoms may progress rapidly and include severe itching, hives, sweating, swelling of the throat, breathing difficulties, lowered blood pressure, unconsciousness and even death.

DISABILITY: Under Section 504 of the Rehabilitation Act of 1973 and the *Americans with Disabilities Act*, "person with a disability" means any person who has a physical or mental impairment which substantially limits one or more major life activity, has a record of such an impairment, or is regarded as having such an impairment." The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis, cancer, heart disease, metabolic diseases such as diabetes and phenylketonuria (PKU); mental retardation; emotional illness; and drug addiction and alcoholism. Major life activities covered by this definition include caring for one's self, eating, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Under the *Individuals with Disabilities Education Act (IDEA)*, the term "disability" refers to specified physical, mental, emotional, or sensory impairments which adversely affect a child's educational performance. Thirteen recognized disability categories which establish a child's need for special education and related services are listed in IDEA. These disabilities include autism, deaf-blindness, deafness or other hearing impairments, mental retardation, orthopedic impairments, other serious chronic or acute health problems (such as a heart condition, epilepsy, or tuberculosis), serious

impairments, other serious chronic or acute health problems (such as a heart condition, epilepsy, or tuberculosis), serious emotional disturbance, specific learning disabilities, speech or language impairment, traumatic brain injury, blindness or a visual impairment which adversely affects a child's educational performance.

EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT (EPSDT) PROGRAM: A preventative and comprehensive Medicaid health care benefit for Medicaid-eligible individuals up to age 21. An objective of the EPSDT Program is to detect and treat health problems and conditions early before they become more complex and costly. Most children under age 21 who are eligible for Medicaid are automatically eligible for EPSDT services. However, States have some discretion in determining the financial criteria that will be used for Medicaid eligibility. School staff should work closely with Medicaid program staff to identify Medicaid-eligible students and make their school program effective. EPSDT allows providers, including schools, to be reimbursed for preventative and treatment services for Medicaid-eligible children.

FOOD ALLERGY: Hypersensitivity from an abnormal response of the body's immune system to food or food additive(s) that would otherwise be considered harmless. Many of the true food allergy symptoms often resemble allergic reactions to other substances, such as penicillin, drugs, or bee stings.

FOOD INTOLERANCE: An adverse food-induced reaction that does not involve the body's immune system. Lactose intolerance is one example of a food intolerance. A person with lactose intolerance lacks an enzyme that is needed to digest milk sugar. When that person eats milk products, symptoms such as gas, bloating, and abdominal pain may occur.

FREE APPROPRIATE PUBLIC EDUCATION (FAPE): Under the *Individuals with Disabilities Education Act*, FAPE means special education and related services provided under public supervision and direction, in conformity with an individualized education program (IEP), and at no cost to parents. In appropriate situations, nutrition services could be

deemed "special education" (specially designed instruction) or a "related service" (support services required to assist a child with a disability to benefit from special education).

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

(IDEA): Formerly the *Education of the Handicapped Act*, originally enacted in 1975, IDEA includes Part B, the basic grants to States program which provides Federal funds to assist States and school districts in making a free appropriate public education available to eligible students with specified disabilities residing within the State, in mandated age ranges, beginning at a student's third birthday and possibly lasting to a student's twenty-second birthday. Students with specified physical, mental, emotional or sensory impairments such as mental retardation, hearing and/or visual impairments, orthopedic impairments, autism, traumatic brain injury or specific learning disabilities who need special education and related services are eligible for services under IDEA. Related services and special education may include meal modifications or accommodations.

INDIVIDUALIZED EDUCATION PROGRAM (IEP):

The written statement of the special education program of specialized instruction and related services to be provided to a child with a covered disability. Each student's IEP must contain, among other elements, a statement of goals and objectives, the specific special education and related services to be provided to the child, and the extent that the child will be able to participate in regular educational programs; and, under certain circumstances, a statement of needed transition services. Under IDEA, the IEP process is the vehicle for determining whether nutrition services are provided as a component of a child's special education program.

OSTEOPATHIC PHYSICIAN OR DOCTOR OF

OSTEOPATHIC MEDICINE: A fully trained physician who is licensed by the State to prescribe medication or to perform surgery. The American Medical Association includes osteopathic physicians as equal members with M.D.s. The majority of doctors of osteopathic medicine are primary care physicians.

SPECIAL DIETARY NEEDS: An individual who does not have a disability, as defined in 7 CFR 15(b).3, but is unable to consume a particular food because of a medical or other special dietary condition is considered to have a special dietary need. The individual's special dietary need and the needed substitution(s) must be supported by a medical statement from a licensed medical authority or other appropriate health professional as designated by the State agency. A person with special dietary needs may have a food allergy or intolerance (for example, lactose intolerance) but does not have life-threatening (anaphylactic) reactions when exposed to food(s) to which he/she is allergic.

RECOGNIZED MEDICAL AUTHORITY: Physicians, physician assistants, nurse practitioners, or other health professionals specified by the State agency, as defined in FCS Instruction 783-2, Revision 2, *Meal Substitutions for Medical or Other Special Dietary Reasons*.

REGISTERED DIETITIAN (R.D.): A nutrition professional who has earned a B.S. or B.A. degree, met basic academic and clinical training requirements, and passed the qualifying examination for professional registration for dietetics. The registration program is maintained by the Commission on Dietetic Registration. R.D.s can answer questions on special diets, menu planning, and related topics. An R.D. may work with the physician and school staff to assist in meeting a child's special nutritional needs and to ensure that menus are in compliance with the physician's diet order.

REHABILITATION ACT OF 1973: The principal Federal legislation aimed at promoting the employment and independent living of people with disabilities. Section 504 of Title V of this legislation prohibits discrimination against qualified persons with disabilities in the programs or activities (including hiring practices) of any organization receiving Federal financial assistance.

ACTION BY: Regional Directors
Special Nutrition Programs

SOURCE CITATION: Rehabilitation Act of 1973, Section 504;
7 CFR Part 15b; 7 CFR Sections 210.10(i)(1),
210.23(b), 215.14, 220.8(f), 225.16(g)(4), and
226.20(h)

Meal Substitutions for Medical
or Other Special Dietary Reasons

Child Nutrition Program regulations require participating school food authorities, institutions and sponsors to offer to all participants breakfasts, lunches, suppers, supplements and milk which meet the meal patterns identified in the Program regulations. Departmental regulations further require substitutions to the standard meal patterns for participants who are considered handicapped under 7 CFR Part 15b and whose handicap restricts their diet; and permit substitutions for other participants who are not handicapped but are unable to consume regular Program meals because of medical or other special dietary needs. The provisions requiring substitutions for handicapped participants respond to the requirements of Section 504 of the Rehabilitation Act of 1973 and to the U.S. Department of Agriculture's implementing regulations, 7 CFR Part 15b, which provide that no otherwise qualified handicapped individuals shall, solely on the basis of handicap, be excluded from participation in, be denied benefit of, or subjected to discrimination under any program or activity receiving Federal financial assistance.

This Instruction outlines the policy for food substitutions and other modifications in the meal patterns necessary to meet the dietary requirements of Program participants with handicaps and with other special dietary needs. School food authorities, institutions and sponsors are required to offer Program meals to participants with handicaps whenever Program meals are offered to the general populations served by the Programs. School food authorities, institutions and sponsors should be aware that the

DISTRIBUTION: 5,6,7,11,12	MANUAL MAINTENANCE INSTRUCTIONS: Remove FNS Instruction 783-2, Rev. 1, from Manual. Insert this Instruction.	RESPONSIBLE FOR PREPARATION AND MAINTENANCE: CND-100	Page 1 10-14-94
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Individuals with Disabilities Education Act (IDEA) imposes requirements on States which may affect them, including the service of meals even when such service is not required by the Child Nutrition Programs.

For example, the individualized education program developed for a child under the IDEA may require a meal to be served outside of the regular meal schedule for Program meals or may require a breakfast to be served in a school food authority which does not participate in the School Breakfast Program. While the school food authority, institution or sponsor may not claim these meals as Program meals, it may use the same food service facilities or food service management company to provide these meals as it uses to provide Program meals, and Program funds may be used to pay for the costs associated with the IDEA-required meals. Inquiries regarding the IDEA's requirements should be directed to the U.S. Department of Education, the Agency responsible for the IDEA's administration and enforcement.

School food authorities, institutions and sponsors may also have responsibilities under the Americans with Disabilities Act (ADA). Inquiries regarding a school food authority's, institution's or sponsor's responsibilities under the ADA should be directed to the U.S. Department of Education, the agency responsible for the enforcement of the ADA's requirements in elementary and secondary education systems.

I HANDICAPPED PARTICIPANTS

"Handicapped person" is defined in 7 CFR 15b.3(i) as any person who has "a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment." (See Exhibit A, 7 CFR 15b.3.) "Major life activities" are defined in 7 CFR 15b.3(k) as "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working." School food authorities, institutions and sponsors participating in the Child Nutrition Programs are required to make substitutions or modifications to the meal patterns for those participants with handicaps who are unable to consume the meals offered to nonhandicapped participants.

(I)

Determinations of whether or not a participant has a handicap which restricts his or her diet are to be made on an individual basis by a licensed physician. (Licensed physicians include Doctors of Osteopathy in many states.) The physician's medical statement of the participant's handicap must be based on the regulatory criteria for "handicapped person" defined in 7 CFR Part 15b.3(i) and contain a finding that the handicap restricts the participant's diet. In those cases in which the school food authority, institution or sponsor has consulted with the physician issuing the statement and is still unclear whether the medical statement meets the regulatory criteria, the school food authority, institution or sponsor may consult the State agency.

A participant whose handicap restricts his or her diet shall be provided substitutions in foods only when supported by a statement signed by a licensed physician. The medical statement shall identify:

A The participant's handicap and an explanation of why the handicap restricts the participant's diet;

B The major life activity affected by the handicap; and

C The food or foods to be omitted from the participant's diet, and the food or choice of foods that must be substituted. If the handicap would require caloric modifications or the substitution of a liquid nutritive formula, for example, this information must be included in the statement. If the handicapped participant requires only textural modification(s) to the regular Program meal, as opposed to a meal pattern modification, the medical statement is recommended, but not required. In such cases, the purpose of the statement is to assist the school food authority, institution or sponsor in providing the appropriate textural modification(s). Unless otherwise specified by the physician, the meals modified for texture will consist only of food items and quantities specified in the regular menus.

The State agency should make 7 CFR 15b.3 (Exhibit A) available to school food authorities, institutions and sponsors. The school food authority, institution or sponsor should also provide parents or guardians with 7 CFR Part 15b.3, so that their physicians may correctly assess whether an individual's handicap meets the regulatory criteria. School food authorities, institutions and sponsors should use the services of a Registered Dietitian to assist in implementing the medical statement, as appropriate.

(I)

Generally, participants with food allergies or intolerances, or obese participants are not "handicapped persons", as defined in 7 CFR 15b.3(i), and school food authorities, institutions and sponsors are not required to make substitutions for them. However, when in the physician's assessment food allergies may result in severe, life-threatening reactions (anaphylactic reactions) or the obesity is severe enough to substantially limit a major life activity, the participant then meets the definition of "handicapped person", and the food service personnel must make the substitutions prescribed by the physician.

II PARTICIPANTS WITH OTHER SPECIAL DIETARY NEEDS

School food authorities, institutions or sponsors may, at their discretion, make substitutions for individual participants who are not "handicapped persons", as defined in 7 CFR 15b.3(i), but who are unable to consume a food item because of medical or other special dietary needs. Such substitutions may only be made on a case-by-case basis when supported by a statement signed by a recognized medical authority. In these cases, recognized medical authorities may include physicians, physician assistants, nurse practitioners or other professionals specified by the State agency.

For these nonhandicapped participants, the supporting statement shall include:

A An identification of the medical or other special dietary need which restricts the participant's diet; and

B The food or foods to be omitted from the participant's diet, and the food or choice of foods that may be substituted.

School food authorities, institutions and sponsors are not required to make substitutions for participants whose conditions do not meet the definition of "handicapped person" set forth in 7 CFR 15b.3(i). For example, individuals who are overweight or have elevated blood cholesterol generally do not meet the definition of handicapped person, and thus school food authorities, institutions, and sponsors are not required to make meal substitutions for them. In fact, in most cases, the special dietary needs of nonhandicapped participants may be managed within the normal Program meal service when a well-planned

(II)

variety of nutritious foods is available to children, and/or "offer versus serve" is available and implemented.

III REIMBURSEMENT AND AVAILABILITY OF SUBSTITUTIONS

Reimbursement for meals served with an authorized substitute food to handicapped participants or to participants with other special dietary needs shall be claimed at the same reimbursement rate as meals which meet the meal pattern. Furthermore, there shall not be a supplementary charge for the substituted food item(s) to either a handicapped participant or to a participant with other special dietary needs. 7 CFR 15b.26(d)(1) specifies that, in providing food services, recipients of Federal financial assistance "may not discriminate on the basis of handicap" and "shall serve special meals, at no extra charge, to students whose handicap restricts their diet." While any additional costs for substituted foods are considered allowable Program costs, no additional Child Nutrition Program reimbursement is available. Sources of supplemental funding may include special education funds (if the substituted food is specified in the child's individualized education program); the general account of the school food authority, institution or sponsor; or, for school food authorities, the nonprofit school food service account.

IV ACCESSIBILITY

7 CFR 15b.26(d)(2) provides: "Where existing food service facilities are not completely accessible and usable, recipients may provide aides or use other equally effective methods to serve food to handicapped persons." The school food authority, institution or sponsor is responsible for the accessibility of food service sites and for ensuring the provision of aides, where needed. As with additional costs for substituted foods, any additional costs for adaptive feeding equipment or for aides are considered allowable costs. However, no additional Child Nutrition Program reimbursement is available. Sources of supplemental funding may include special education funds (if specified in the child's individualized education program); the general account of the school food authority, institution or sponsor; or, for school food authorities, the nonprofit school food service account.

(IV)

7 CFR 15b.26(d)(2) further provides that recipients provide all food services in the most integrated setting appropriate to the needs of the handicapped persons as required by 7 CFR 15b.23(b).

That section requires Program recipients to ensure that handicapped persons participate with nonhandicapped persons to the maximum extent appropriate to the needs of the handicapped person in question.

V COOPERATION

When implementing the guidelines of this Instruction, food service personnel should work closely with the parent(s) or responsible family member(s) and with all other school, child care, medical and community personnel who are responsible for the health, well-being and education of participants with handicaps or with other special dietary needs to ensure that reasonable accommodations are made to allow such individuals' participation in the meal service. This cooperation is particularly important when accommodating children or elderly adults whose handicapping conditions require significant modifications or personal assistance.



ALBERTA C. FROST
Director
Child Nutrition Division

Attachment

§15b.3 Definitions.

As used in this part, the term or phrase:

(a) "The Act" means the Rehabilitation Act of 1973, Public Law 93-112, 87 Stat. 390 (1973), as amended by the Rehabilitation Act Amendments of 1974, Public Law 93-651, 89 Stat. 2 (1974) and Public Law 93-516, 88 Stat. 1617 (1974) and the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, Public Law 95-602, 92 Stat. 2955 (1978). The Act appears at 29 U.S.C. 701-794.

(b) "Section 504" means section 504 of the Act, 29 U.S.C. 794.

(c) "Education of the Handicapped Act" means the Education of the Handicapped Act, Public Law 92-230, Title VI, 84 Stat. 175 (1970), as amended by the Education of the Handicapped Amendments of 1974, Public Law 93-380, Title VI, 88 Stat. 576 (1974), the Education for All Handicapped Children Act of 1975, Public Law 94-142, 89 Stat. 773 (1975), and the Education of the Handicapped Amendments of 1977, Public Law 95-49, 91 Stat. 230 (1977). The Education of the Handicapped Act appears at 20 U.S.C. 1401-1461.

(d) "Department" means the Department of Agriculture and includes each of its operating agencies and other organizational units.

(e) "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has delegated or may delegate the authority to act under the regulations of this part.

(f) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Federal financial assistance" or "assistance" means any grant, contract (other than a procurement contract or a contract of insurance or guaranty), cooperative agreement, formula allocation, loan, or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal Federal property or any interest in Federal property, including:

(i) A sale, transfer, lease or use (on other than a casual or transient basis) of Federal property for less than fair market value, for

reduced consideration or in recognition of the public nature of the recipient's program or activity; and

(ii) Proceeds from a subsequent sale, transfer or lease of Federal property if the Federal share of its fair market value is not returned to the Federal Government.

(4) Any other thing of value.

(h) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(i) "Handicapped person" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(j) "Physical or mental impairment" means (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis, cancer, heart disease; diabetes; mental retardation; emotional illness; and drug addiction and alcoholism.

(k) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(l) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(m) "Is regarded as having an impairment" means (1) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such impairments, or (3) has none of the impairments defined in paragraph (j) of this section but is treated by a recipient as having such an impairment.

(n) "Qualified handicapped person" (used synonymously with "otherwise qualified handicapped individual") means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question, but the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others;

(2) With respect to public preschool, elementary, secondary, or adult educational services, a handicapped person, (i) of an age during which non-handicapped persons are provided such services, (ii) of an age during which it is mandatory under State law to provide such services to handicapped persons, or (iii) to whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets all academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(o) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (i) of this section.

(p) for purposes of §15b.18(d), "Historic preservation programs" means programs receiving Federal financial assistance that has preservation of historic properties as a primary purpose.

(q) For purposes of §15b.18(e), "Historic properties" means those buildings or facilities that are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

(r) For purposes of §15b.18(d), "Substantial impairment" means a significant loss of the integrity of finished materials, design quality or special character which loss results from a permanent alteration.

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Health Care Resources

Allergy and Asthma Network/Mothers of Asthmatics, Inc. 800-878-4403	Autism Society of America 800-3-AUTISM
American Academy of Allergy and Immunology (Physician Referral and Information Line) 800-822-2762	Crohn's and Colitis Foundation of America, Inc. 800-343-3637
American Academy of Pediatrics 708-228-5005 x 6771	Cleft Palate Foundation 800-24-CLEFT
American Association of University Affiliated Programs for Persons with Developmental Disabilities (AAUAP) 301-588-8252	Epilepsy Foundation of America 800-EFA-1000
American Cancer Society 800-ACS-2345	Food Allergy Network, Inc. 800-929-4040
American Diabetes Association 800-232-3472	Muscular Dystrophy Association of America 602-529-2000
American Dietetic Association (ADA) 800-366-1655	National Cystic Fibrosis Foundation 800-344-4823
American Heart Association 800-AHA-USA1	National Down Syndrome Congress 800-232-NDSC
Arthritis Foundation 800-283-7800 404-872-7100	National Easter Seal Society 800-221-4602
Association for Retarded Citizens (The ARC) 800-433-5255	Spina Bifida Association of America 800-621-3141
Asthma and Allergy Foundation of America 800-7-ASTHMA	Tourette Syndrome Association 800-237-0717
	United Cerebral Palsy Association 800-USA-5UCP



20

